

REMARKS/ARGUMENTS**Status of application**

Claims 1, 2, 4-6, 8-12, 14-19 and 21-23 are pending.

As noted in the Applicant's submission of January 7, 2010, the Examiner did not include claim 21 in the listing of pending claims in box 4 of the Office Action Summary of the Final Office Action dated November 12, 2009, although the Examiner rejects claim 21 at numbered paragraph 6 on page 2 of the Office Action. It is submitted that claim 21 is pending. See, for example, the Office Action mailed on April 21, 2009, and the Amendment filed on July 14, 2009. Correction by the Examiner is requested.

In the Advisory Action dated February 24, 2010, the Examiner maintains the rejections of the pending claims from the Final Action dated November 12, 2009. Concurrent with this submission, Applicant is submitting a Request for Continued Examination.

Claims

Claims 1, 6 and 11 have been amended in the manner shown in the listing of claims. Support for the amendments can be found in the application, as originally filed, at least at paragraphs [0005], [0030] and [0028] and in Figure 2.

35 U.S.C. § 103

Claims 1, 2, 4, 5, 8, 11, 12, 14-19, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,701,521 (hereinafter "McLlroy") in view of US 2002/0010652 (hereinafter "Deguchi").

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLlroy in

view of US 6,496,979 (hereinafter "Chen") and Deguchi.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLlroy in view of Deguchi as applied to claim 1 above, and further in view of Chen and US 6,151,643 (hereinafter "Cheng").

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLlroy in view of Deguchi as applied to claim 1 above, and further in view of Chen.

For the reasons that follow, Applicant respectfully submits that the claims, as amended, distinguish over the cited references.

Firstly, with respect to the rejections of the independent claims 1, 6 and 11, it is respectfully submitted that neither McLlroy nor Deguchi disclose at least the following claimed features:

- Storing a plurality of identifiers at the host system, with each of at least one of said plurality of identifiers being stored in association with at least one of said plurality of programs;
- Sending a hardware identifier representing said target system and a vendor identifier from the target system to the host system, the vendor identifier identifying a wireless vendor supporting the target system;

In the amended claims of the present application, identifiers are stored in association with programs on the host system. In this manner, the identifiers can be used to select which program to download. The selection can be specific to an individual device or vendor. Neither McLlroy nor Deguchi, stores identifiers in association with programs, or in particular, hardware identifiers and therefore the combination of these two references can not achieve this result. Regarding the Examiner's suggestion that McLlroy discloses "storing a program associated with

said hardware identifier at the host system", the cited portion of McLlroy (col 18, lines 1 to 5) describes using hardware and software information to locate an application source or an application. Hardware and software information is also referred to in this documents as hardware and software attributes of the client device, which is defined at col. 4, lines 44 to 49 as including the type of processor, the type of display device, or the type of operating system used by the client device, or the amount of memory space available in the client device. There is no mention of identifiers anywhere in McLlroy. Even if one could infer that these attributes could include an identifier, which the applicant does not concede, there is nothing to suggest that identifiers are stored on a host system in association with a program. McLlroy is concerned with whether or not the program requested is compatible with the capabilities of the client device and not with selecting a program for which an association with the device's identifier exists in a host system. The McLlroy system does not store the identifiers in association with programs. Likewise, Deguchi does not store any identifiers, whether for the marker devices or the vendors, in association with the music clips.

It is also submitted that the term "vendor identifier", as used in the present application, identifies a wireless vendor supporting the target system, such as a carrier or service provider (see paragraph [0005]). In contrast, in Deguchi, "vendor identifier" identifies the seller of the music marker device. The vendor identifier of Deguchi is associated with the device identifier and is used to direct the user to the vendor who sold the device for future purchases of book-marked music clips. (paragraph [0071]) The music clips themselves are not stored in association with the vendor identifier. In contrast, in the present application, by storing a wireless vendor identifier in association with a program, it is possible to select programs approved for use by the wireless vendor.

Regarding the Examiner's suggestion in the Advisory Action that Deguchi clearly discloses "failing to find a received vendor identifier at a host system and

downloading, responsive to said failing to find said received vendor identifier at the host system, data associated with the received hardware identifier", it is respectfully submitted that the Examiner has not given any weight to the term "received" in this portion of the claims. The "received" vendor identifier in the claims of the present application is the vendor identifier sent from the target system. There is no disclosure in Deguchi of the music marker device sending the vendor identifier to the server terminal. All embodiments disclose the vendor sending the vendor identifier to the server terminal. There is also no disclosure of the vendor identifier being stored on the music marker device or being accessible by the music marker device. Therefore, it would not be possible for the music marker device to send the vendor identifier.

Thus, based on the above, it is submitted that the Examiner has both failed to properly determine the scope and content of McLlroy and Deguchi and failed to ascertain the differences between independent claims 1, 6 and 11 and those two references, as required *KSR International Co. v. Teleflex Inc.* (KSR), 82 USPQ2d 1385 (2007). The remaining claims are each dependent on one of claims 1, 6 and 11 and therefore the same arguments apply. Neither Chen nor Cheng resolve the deficiencies in McLlroy and Deguchi.

Therefore, it is respectfully the amended claims are in compliance with 35 U.S.C. 103(a) with respect to the references cited in the Final Action of November 12, 2009.

These remarks are filed in response to the Advisory Action of February 27, 2010, a response to which was due on that date. Accordingly, the Applicants respectfully submit that a one-month extension of time fee falls due in connection with the filing of this paper. Additionally, a Request for Continued Examination is being filed concurrently with this submission. If the Applicants are mistaken, the Commissioner is hereby authorized to deduct any necessary fees from our Deposit Account No. 13-2400.

Favourable reconsideration and allowance of this application are respectfully requested. Should the Examiner believe however that additional amendments to the claims may be required to secure allowance of this application; he is invited to telephone the undersigned at the below-noted number to facilitate further prosecution of this application.

Respectfully Submitted,

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